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OFFICE OF PETITIONS

In re Application of :
Kim et al. :
Application No. 10/718,083 :
Filed: November 19, 2003 : ON PETITION
Attorney Docket No. :
MUTU12.001DV1 :

This is a decision on the Petition Under 37 CFR 1.52(e)(2) to Review the Non-Accordance of Filing Date, filed April 8, 2004, requesting the above-identified application be accorded a filing date of November 19, 2003.

The petition is granted.

The application was filed on November 19, 2003. On February 19, 2004, the Office of Initial Patent Examination mailed a Notice of Incomplete Provisional Application (hereinafter "Notice") stating that the application had not been accorded a filing date because the application had been deposited without drawings.

Applicant responds with the instant petition wherein Applicant avers that the drawings are not necessary for an understanding of the invention, and are not required under 35 U.S.C. § 113.

A review of the file reveals that Petitioner is correct - the specification contains method claims. As stated in MPEP § 601.01(f), it is the practice of the PTO to treat an application that contains at least one method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. § 113 (first sentence).

MPEP § 601.01(f) also states that:

A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description.


This application contains method claims; therefore, the application should have been treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g).

In view of the above, the Notice mailed February 19, 2004, was mailed in error and is hereby withdrawn.

This application is being forwarded to the Office of Initial Patent Examination, Customer Corrections, for further processing, with the filing date of November 19, 2003, and an indication that no drawings were required nor present on filing.

The petition fee has been refunded to deposit account 11-1410 as authorized in the instant petition.

Telephone inquiries concerning this matter should be directed to the undersigned at (703) 305-0014.


Derek L. Woods
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Office of Petitions